IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO.3877 OF 1996

Pidilite Industries Limited ..Plaintiff.
Vs.
Gujarat Inject Limited & Anr. ..Defendants.

....

Mr. Faisal Sayyed and Mr. Durgesh Khanapurkar i/b Manilal Kher Ambalal & Co. for the Plaintiff.
None for the Defendants.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

16th July, 2007.

P.C. :

1. The Suit has been instituted for seeking a declaration that the agreement dated 1st June, 1995 at Exh. A was duly and validly terminated by the Plaintiff and for a direction to the Defendants to forthwith handover to the Plaintiff possession of the equipment described in Exhibit A. An order of winding up was passed against the Defendant in pursuance of a recommendation of the B. I. F. R., by the Gujarat High Court on 20th January, 2000. In pursuance of a chamber order passed by this Court the Official Liquidator attached to the High Court of Gujarat has been impleaded as a party to the suit. The claim in the suit arises out of

an agreement dated 1st June, 1995 by which the Plaintiff agreed to give on lease to the Defendant company, now in liquidation the equipment as described in the schedule to the agreement for a term of five years. The lease rentals were stipulated therein and modified by an arrangement dated 20th December, 1995. The lessee agreed to pay an amount equal to 28%. per annum of each installment or part thereof that remains unpaid. The equipment was at all times to remain the sole and exclusive property of the lessor. In the event of default, the lessor was, inter alia, permitted to terminate the agreement and demand the return of the leased equipment. In pursuance of the agreement entered into between the parties, the original Plaintiffs gave on lease to the Defendant company in liquidation the equipment as envisaged therein. On 13th July, 1995 the Defendant forwarded a demand draft of Rs.33,059.94 towards the second installment of the lease rentals. A similar amount was forwarded towards the third installment on 24th August, 1995. A certificate dated 13th September, 1995 of the successful installation of the equipment at the Defendant's factory was also issued. Further lease rentals were paid on 18th October, 1995 by a demand draft for Rs.23,523/-. Thereafter there was a default and on 29th November, 1995 the Defendant sought some

time to pay the outstandings. The defaults have been committed for the period beginning from 15th April, 1996. A letter of demand was addressed on 2nd July, 1996. In response by its advocate's letter dated 11th July, 1996 the Defendants have stated that the company has made a reference to the B. I. F. R. under the Sick Industrial Companies (Special Provisions) Act, 1985. On 9th August, 1996 the company requested the Plaintiff not to deposit the postdated cheques which have been furnished.

2. The agreement between the parties was executed at Mumbai and the Defendant was liable to handover the equipment back to the Plaintiff at Mumbai.

3. In support of the claim in the Suit the Plaintiff has relied upon an affidavit in lieu of the examination-in-chief of Mr. Satish Barve, an authorized nominee. The affidavit contains the essential facts upon which the claim is based as already noted above. A compilation of the original documents has been produced. Permission has been sought to lead secondary evidence of the documents mentioned at Sr. Nos. 4, 5 and 6 of the compilation since the documents have been misplaced / lost and could not be

located despite diligent efforts. Insofar as the lease agreement is concerned, there is intrinsic evidence that the Defendant has acted on the basis thereof by the payment of lease rentals from time to time. There is no reason why permission to lead secondary evidence should not be granted. Permission is accordingly granted to do so.

4. The Defendants have been served with the writ of summons, but no written statement has been filed.

5. The claim in the suit is duly substantiated by the documentary material on the record. There being a default on the part of the Defendants in complying with the conditions in the lease agreement, the Plaintiff is therefore entitled to a return of the equipment in terms of the provisions of the agreement. In any event, the term of theagreement has also come to an end. A decree has therefore been prayed at the present stage in terms of prayer clause (b). The Suit shall accordingly stand decreed in terms of prayer clause (b). The Plaintiff is also entitled to and is allowed the costs of the suit as prayed.